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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-375

JOHN PHILIP WIATRAK III
25835 Van Leuven Apt. #172
Loma Linda, California 92354

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, (Board) Department of Consumer Affairs.

2. On or about June 30, 2006, the Board received an application for a Respiratory Care Practitioner License from John Philip Wiatrak III (Respondent). On or about June 27, 2006, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on October 23, 2006.

JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of

1 the following laws. All section references are to the Business and Professions Code (Code) unless
2 otherwise indicated.

3 4. Section 3710 of the Code states: “The Respiratory Care Board of California,
4 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the
5 Respiratory Care Practice Act].”

6 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
7 revoke licenses to practice respiratory care as provided in this chapter.”

8 6. Section 3732, subdivision (b) of the Code states:
9 “The board may deny an application, or may order the issuance of a license
10 with terms and conditions, for any of the causes specified in this chapter for
11 suspension or revocation of a license, including, but not limited to, those causes
12 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

13 7. Section 3750 of the Code states:
14 “The board may order the denial, suspension or revocation of, or the
15 imposition of probationary conditions upon, a license issued under this chapter, for
16 any of the following causes:

17 “ . . .

18 “(d) Conviction of a crime that substantially relates to the qualifications,
19 functions, or duties of a respiratory care practitioner. The record of conviction or a
20 certified copy thereof shall be conclusive evidence of the conviction.

21 “. . . .”

22 8. Section 3752 of the Code states:
23 “A plea or verdict of guilty or a conviction following a plea of nolo
24 contendere made to a charge of any offense which substantially relates to the
25 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
26 a conviction within the meaning of this article. The board shall order the license
27 suspended or revoked, or may decline to issue a license, when the time for appeal
28 has elapsed, or the judgment of conviction has been affirmed on appeal or when an

1 order granting probation is made suspending the imposition of sentence, irrespective
2 of a subsequent order under Section 1203.4 of the Penal Code allowing the person
3 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
4 the verdict of guilty, or dismissing the accusation, information, or indictment.”

5 9. California Code of Regulations, Title 16, section 1399.370, states:

6 “For the purposes of denial, suspension, or revocation of a license, a crime
7 or act shall be considered to be substantially related to the qualifications, functions
8 or duties of a respiratory care practitioner, if it evidences present or potential
9 unfitness of a licensee to perform the functions authorized by his or her license or in
10 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts
11 shall include but not be limited to those involving the following:

12 “ . . .

13 “(c) Conviction of a crime involving driving under the influence or reckless
14 driving while under the influence. . . .”

15 COST RECOVERY

16 10. Section 3753.5, subdivision (a) of the Code states:

17 "In any order issued in resolution of a disciplinary proceeding before the
18 board, the board or the administrative law judge may direct any practitioner or
19 applicant found to have committed a violation or violations of law to pay to the
20 board a sum not to exceed the costs of the investigation and prosecution of the
21 case."

22 11. Section 3753.7 of the Code states:

23 "For purposes of the Respiratory Care Practice Act, costs of prosecution
24 shall include attorney general or other prosecuting attorney fees, expert witness fees,
25 and other administrative, filing, and service fees."

26 12. Section 3753.1, subdivision (a) of the Code states:

27 "An administrative disciplinary decision imposing terms of probation may
28 include, among other things, a requirement that the licensee-probationer pay the

monetary costs associated with monitoring the probation."

CAUSE FOR DENIAL OF APPLICATION

(Conviction of a Crime)

13. Respondent's application is subject to denial under sections 3750, subdivision (d) and 3752 of the Business and Professions Code, and California Code of Regulations, Title 16, section 1399.370, subdivision (c), in conjunction with Business and Professions Code section 3732, subdivision (b), in that respondent was convicted of crimes substantially related to the qualifications, functions and duties of a respiratory care practitioner. The circumstances are as follows:

August 4, 1998 Conviction

A. On or about June 12, 1998, a Redlands police officer made an enforcement stop after he observed respondent driving his vehicle erratically. The officer noticed that Respondent's breath had an odor of alcohol, his eyes were bloodshot, his speech was slurred, and he stumbled as he walked. Respondent admitted he had been drinking. He failed to successfully complete the field sobriety tests. The results of his breath tests indicated his blood alcohol level was .19% and .21%.

B. In San Bernardino County Superior Court, Complaint No. TRE30586, Respondent was charged with driving under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision(a), a misdemeanor (Count 1), and driving with .08% or higher blood alcohol level, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor (Count 2).

C. On or about August 4, 1998, respondent was convicted upon his plea of guilty to driving under the influence of alcohol (Count 1), and driving with .08% or higher blood alcohol level (Count 2). He was placed on probation for three years on a number of terms and conditions, among others: pay a fine in the amount of \$1,224.00 and a fee in the amount of \$35.00, and complete a first offender alcohol program. His driving privilege was restricted for 3 months.

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1 the complaint were dismissed.

2 August 1, 1989 Conviction

3 H. On or about June 18, 1989, Riverside police officers responded to a
4 report of a traffic collision. Respondent admitted he was speeding and that he
5 struck a vehicle which turned in front of him. The officers determined that
6 Respondent was driving under the influence of alcohol, and he was arrested.

7 I. On or about June 25, 1989, in Riverside County Superior Court,
8 Complaint No. 224017, Respondent was charged with driving under the influence
9 of alcohol, in violation of Vehicle Code section 23152, subdivision (a), a
10 misdemeanor, (Count 1), and driving with .08% or higher blood alcohol level, in
11 violation of Vehicle Code section 23152, subdivision (b), a misdemeanor (Count 2).

12 J. On or about August 1, 1989, respondent was convicted upon his plea
13 of guilty to driving with .08% or higher blood alcohol level (Count 2). He was
14 placed on probation for four years on a number of terms and conditions, among
15 others: serve 2 days in county jail, pay a fine in the amount of \$815.00 and a fee in
16 the amount of \$20.00, and complete a drinking driver program. His driving
17 privilege was restricted for 12 months. Count 1 of the complaint was dismissed.
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Denying the application of John Philip Wiatrak III for a Respiratory Care Practitioner License;
2. Directing John Philip Wiatrak III to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
3. Taking such other and further action as deemed necessary and proper.

DATED: March 7, 2007

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant